

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - -

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Case No. 12-md-02311

MDL NO. 2311

Hon. Marianne O. Battani

STATUS CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, August 1, 2012

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23

24

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1 Detroit, Michigan

2 Wednesday, August 1, 2012

3 at about 10:00 a.m.

4

— — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Marianne O. Battani presiding.

10 You may be seated.

11 THE COURT: Good morning.

12 ATTORNEYS PRESENT: (Collectively) Good morning,
13 Your Honor.

14 THE COURT: I will say you are getting less
15 intimidating; it must be your numbers are going down or I'm
16 getting used to you or something.

17 Okay. Welcome. Our purpose today was to entertain
18 the objections by McGuire Bearing Company, and I
19 understand -- is Mr. Brent Johnson, are you here, sir?

20 MR. PIERSON: Your Honor, I'm Kit Pierson, and I'm
21 lead counsel.

22 THE COURT: Okay. Can you please come to the
23 podium. Can I have your appearance, please?

24 MR. PIERSON: Yes, Your Honor. My name is
25 Kit Pierson, I'm from Cohen Milstein and I represent

1 McGuire Bearings.

2 THE COURT: Okay. Mr. Pierson, is this correct
3 that you are withdrawing your objection?

4 MR. PIERSON: It is correct, Your Honor.
5 Mr. Johnson is my colleague and my partner. He called this
6 morning just as a courtesy call to chambers.

7 THE COURT: Okay. Is there anything that you want
8 to put on the record about that --

9 MR. PIERSON: Not really, Your Honor. All I would
10 say is -- I will make one comment, if you will sort of
11 forgive me, is I did spend a year clerking for Judge
12 Feikens -- the late Judge Feikens, in this court many years
13 ago, too many years ago, and so it is a pleasure to be here
14 again.

15 I guess the only comment I would want to make is
16 this, Your Honor: We appreciate the complexity of the web of
17 cases that you are in and the Court's efforts. I have read
18 the prior status conference, I obviously have read the MDL
19 panel's comments about how you bring these cases together and
20 proceed in an efficient way.

21 So we have -- since filing our motion a couple
22 things have happened. Number one, other bearing cases have
23 been filed including by the four counsel that you designated
24 as co-lead in other cases. We have had extended discussions
25 with them about how you sort of proceed efficiently in this

1 web of cases, and we have worked with them before in other
2 cases, and we are just satisfied that they are proceeding in
3 a sensible and inclusive way and we want to support that, not
4 fight it. Whatever fights there are in this case should be
5 between the plaintiffs and defendants, and whatever we can do
6 to help you get to that point we are happy to work with them
7 in as supportable a way as we can.

8 THE COURT: And it is my understanding in
9 appointing the interim lead counsel and in discussing with
10 them their interaction with the other attorneys, that they
11 will call on individual attorneys or assign individual
12 attorneys duties when necessary so I do foresee that you will
13 be an active part.

14 MR. PIERSON: We would like to be, Your Honor. We
15 believe in the case and we have very good relationships with
16 them and are confident they will proceed in that way.

17 THE COURT: Okay. Thank you very much.

18 MR. PIERSON: Thank you.

19 THE COURT: Any of the other parties have any
20 comments on this motion? No.

21 MR. FINK: Your Honor, with respect to the direct
22 purchaser plaintiffs --

23 THE COURT: Please put your appearance on --

24 MR. FINK: I'm sorry. David Fink appearing on
25 behalf of direct purchaser plaintiffs, and really only

1 appearing to say that Gene Spector will speak for direct
2 purchaser plaintiffs today.

3 THE COURT: Okay. Mr. Spector?

4 MR. SPECTOR: Good morning, Your Honor.
5 Eugene Spector on behalf of direct purchaser plaintiffs.

6 I really have very little to say because now that
7 Cohen Milstein has withdrawn its objection to the entry of
8 CMO Number 3, the only question with regard to the entry of
9 that order was that raised by the defendants in the joint
10 submission in connection with the June 15th conference. I'm
11 prepared to answer any questions that Your Honor might have
12 with regard to the issues that they have raised, although I'm
13 not sure they have any standing to raise them.

14 THE COURT: Well, they did raise some issues and we
15 will hear from the plaintiffs -- excuse me, from the
16 defendants. Why don't we hear from the defendants first and
17 then I'm going to call back up. All right. So let's hear --

18 MR. SPECTOR: Thank you, Your Honor.

19 THE COURT: Who wishes to speak, one or all?

20 MR. IWREY: Your Honor, Howard Iwrey on behalf of
21 Lear.

22 We take no position on the appointment of lead and
23 liaison counsel in the wire harness case, but we do take a
24 position that we couldn't stipulate to the appointment of
25 lead and liaison counsel in the other cases since those

1 parties were not before the Court either on June 15th, they
2 were not part of the MDL proceeding and not part of the JPML
3 order. And so what plaintiffs want to do is essentially have
4 an ex-parte order that is binding on non-present parties. We
5 can't take a position on that. We can't stipulate to that.
6 I think what should happen is what the Court had said on
7 June 15th, to treat these matters separately, to have a
8 separate status conference and to allow those parties to
9 brief the issues in terms of lead and liaison counsel,
10 addressing things such as potential conflicts of interest,
11 for example, and to let those parties address the issues of
12 whether they should be consolidated under Rule 42.

13 THE COURT: Okay.

14 MR. IWREY: So this isn't the appropriate forum. I
15 think they should be treated on separate tracks.

16 THE COURT: Well, I think that the issue is, and
17 I'm looking at the proposed case management order number 3 in
18 which it says basically lead -- interim lead counsel and
19 interim liaison counsel continue as such for all cases filed
20 in or transferred to this Court in the MDL 2311.

21 MR. IWREY: Right.

22 THE COURT: The question will be, and I'm going to
23 ask the plaintiffs to address this, we should put not
24 anything about status conferences because those are
25 administrative matters that we will get to, and I assume we

1 will be seeing people in status conferences as they come into
2 the case, but whether we should include in this order a
3 provision that there may be objections filed and that we
4 would hear, as we are today if it is not resolved, the
5 objections because I think you're absolutely right, we don't
6 even know who these people, companies, whatever, may be.

7 MR. IWREY: Cases are still being filed, parties
8 are not served.

9 THE COURT: Okay. Thank you.

10 MR. IWREY: Thank you, Your Honor.

11 THE COURT: Mr. Spector, if you would address that,
12 please.

13 MR. SPECTOR: Good morning, again, Your Honor.

14 With respect to adding a provision regarding
15 objections for anyone who comes into this case later, I don't
16 have a problem with that. We are prepared to stand on the
17 way we handle the cases and the decisions that you have
18 already made with regard to our satisfying Rule 23(G)
19 requirements to be an interim lead counsel in the case, and
20 we will do that in every case if that's what the Court wants.
21 We thought that the most efficient way is the way that you
22 have proposed, which is to have that as a presumption, in
23 essence.

24 THE COURT: Well, you know what, and that is
25 exactly -- thank you, because I thought about that too,

1 that's exactly the way to word it is that the presumption is,
2 as stated in this paragraph, parties opposing it may present
3 objections for good cause or something to that effect. If
4 you just add a sentence I would be more comfortable with that
5 because we simply don't know what may come up. It is
6 something that would be unanticipated but, you know,
7 unanticipated things happen.

8 MR. SPECTOR: I will say however, Your Honor, my
9 firm has experience in a case with a similar kind of
10 situation in the Average Wholesale Price Pharmaceutical
11 Antitrust Litigation in front of Judge Sarason in Boston.
12 That case involved separate drugs and separate pharmaceutical
13 companies and individual cases, but it had been put into a
14 single MDL by the panel I guess about ten years ago.

15 THE COURT: And it's still going on?

16 MR. SPECTOR: It has just finished. One of those
17 kinds of cases, Your Honor. It has just finished. Part of
18 the problem was that there were some --

19 THE COURT: You're lead counsel?

20 MR. SPECTOR: We are one of lead counsel. My
21 partner, Jeff Kodroff, is one of the lead counsel in that
22 case. Part of the problem in terms of delay were there were
23 a number of appeals of settlements by outlying counsel who
24 wanted to challenge that and that, of course, always adds a
25 year or a year and-a-half to any case. If you are lucky it

1 is only a year or a year and-a-half. They did that on
2 multiple occasions, so that's really the reason why it took
3 as long as it took.

4 But it is -- all I'm saying is AWP gives you an
5 example of a case where that was done. The court at the
6 inception of that case appointed four interim lead counsel,
7 they handled the case from that time until the end, and
8 additional cases were filed, additional defendants were
9 named, it was fine.

10 There was one comment that Mr. Iwrey made in his
11 presentation about consolidation of these cases, and I don't
12 think consolidation is what we are talking about here, I
13 think we are talking about coordination. I think that these
14 cases are separate products. I think we proposed to handle
15 them as separate products. We've talked about in the ECF
16 filings setting up individual dockets for each of those
17 cases. That is our proposal. In fact, I wanted to suggest
18 to the Court today that we set a deadline, possibly a status
19 conference, sometime in September by which we can submit to
20 the Court scheduling orders in each of those other pending
21 cases. There are five or six of them right now if I remember
22 correctly.

23 THE COURT: There are five other beside the wire
24 harness.

25 MR. SPECTOR: Right. In those five other cases if

1 we can then submit to the Court but* then try to reach an
2 agreement with the defendants about scheduling and put
3 together a scheduling order in each of those cases, filing a
4 consolidated amended complaint, answer, motion practice, all
5 of those kind of things.

6 THE COURT: Yes. We are going to get to that in
7 just a minute.

8 Let me say as to this order to be entered, if you
9 would simply submit an order that allows objections for good
10 cause to be submitted I would feel comfortable with that. It
11 is obviously my intention that counsel as appointed will be
12 counsel for all parts but it leaves it open if we need to add
13 somebody. I don't know, you might even say this is something
14 I have never heard of and I don't want to deal with, I don't
15 know. I don't think so. Anyway, let's just put that in so
16 people know and I think that individual attorneys getting
17 involved in this case are certainly going to know that the
18 chances of there being another interim lead counsel are slim
19 but there may be some other format that we have to change. I
20 don't know, I don't even want to go there. Let's assume we
21 are going forward as we are with all parts but we will allow
22 any new party who, of course, has not had an input into these
23 orders file their objections so they may be heard, that's
24 all.

25 MR. SPECTOR: Fine, Your Honor. We will submit a

1 proposed change within the next day or so.

2 THE COURT: Okay. Real good.

3 MR. SPECTOR: Thank you.

4 THE COURT: Then what I wanted to discuss since you
5 were here -- and I want to thank Mr. Iwrey for coming for the
6 defendants to our -- what did we call it, ECF technical
7 little meeting. I would like to report what is going on, and
8 I would like to tell everyone who is here so they know the
9 numbering system that we will be following. I didn't get
10 into when consolidated amended complaints -- no, consolidated
11 complaints will be filed, et cetera, but I want to get this
12 done first so that we have on CM/ECF what I think is a good
13 structure for this case.

14 And for all of you I guess what I want to think of
15 is that the Case No., the 2311, 12-md-2311, that's like a big
16 umbrella number. If you look at it now it is a mess. There
17 is so much in there you don't even want to look at it, and
18 you can hardly get to what you want to find. So what we did
19 or what we are going to do, and I'm going to have Mr. Fink,
20 who has coordinated this, talk because I don't know what the
21 last resolution is, but I just want to go over this
22 structure. Okay.

23 So the 2311 will be like the big umbrella, but when
24 you open up 2311 you are going to see -- you are going to see
25 six master numbers, all right, like six people under this

1 umbrella. There are six master numbers, one for each of the
2 parts. We have six parts now. We are able to expand
3 obviously if there are more parts, as long as we don't get to
4 the 14,000 parts in the car, right? Okay.

5 We will see that the very first digit is a letter.
6 For instance, the wire harness cases are W, the instrument
7 panel cluster is P, et cetera. They will be there so you
8 don't have to memorize this or write this down, I'm sure you
9 will be very familiar with it shortly, but that's how we will
10 identify it. Then there will be 12-cv, and if it's, in fact,
11 a direct purchaser then the number will be for, let's say,
12 the wire harness will be 00101, if it is for the instrument
13 panel it will be 00201, so we know a 2 is instrument panel.
14 We will know -- the very last digit of the number will be
15 whether it is a direct will be 1, dealerships will be 2 and
16 end-payors will be 3. This is all going to be laid out in an
17 order so that you all can have it.

18 When you open up the master 2311 you will be able
19 to click -- let's say you are on fuel senders, you are a
20 direct fuel sender, you will be able to click on fuel sender
21 and then when you go into the fuel sender you will be able to
22 go whether you are a direct dealership or end-payor. So
23 really with a couple clicks you will get just to the area
24 that you want.

25 There will be documents filed in all of these, in

1 some of them, that's what is going to be in the order to tell
2 you where you are going to file your parts -- I mean you're
3 pleadings. So it sounds more confusing than what it is. I
4 think you need to see it in writing. It is not absolute yet.
5 We don't have the order, which is why I'm not handing
6 anything out, but we do know what that basic structure is.
7 So you've got your umbrella number, under that you've got
8 your masters for each part, each part is a master number,
9 underneath each master number for each part will be the three
10 proposed classes. Okay. So that's pretty much the way it is
11 going to be laid out.

12 Mr. Fink, do you want to address the Court in terms
13 of what the status of that is?

14 MR. FINK: Yes. As the Court may recall, very
15 shortly after we all met Mr. Iwrey -- we are going to out him
16 again -- went to Thailand. For reasons unknown, he's
17 returned. While he was gone we were circulating drafts, but
18 he did not really have a chance to review any of it. He's
19 back, we had a brief discussion today, he does have a
20 concern. Everything that the Court described though is
21 perfectly consistent, and I don't want to speak for Howard,
22 but it is perfectly consistent with my understanding of what
23 was discussed in the meeting. It is a system that will work.
24 We will have an order in the next couple of days but we
25 wanted to make sure that the defendants had their input and

1 they really -- it didn't make sense to make a switch.

2 THE COURT: No. The intent of all of this is, and
3 in having everybody who wanted to be or all of our liaison
4 counsel there and defendant representative was so everybody
5 would have an input. I didn't want to impose this and then
6 find out that there was certainly something that I wouldn't
7 have considered because I wouldn't have known it, and I
8 wanted a chance for everybody to have their input. I think
9 that that happened at that meeting, and certainly with this
10 circulating of the proposed order so --

11 MR. FINK: Your Honor, I do want to say how much
12 all of the parties appreciated having the meeting and you
13 being present also because there really were more issues than
14 any of us realized before we started talking.

15 THE COURT: I know, that was very interesting.

16 MR. FINK: It was a surprise -- some of us were
17 surprised, but I think what the Court described is exactly
18 where we ended up and we are all comfortable and some of the
19 wording and some of the preambulatory language I know is a
20 concern to defendants and we will work that through very
21 quickly.

22 I do want to take this opportunity because I don't
23 know if I will have this again to express to the Court how
24 much we appreciated working with Eric Westenberg and how much
25 we will miss him.

1 THE COURT: As will I.

2 MR. FINK: I have to say, I was introduced to the
3 intern this morning, your intern, and explained to him
4 because I thought it was appropriate for him to know that
5 this is a pretty standard case, you get a lot of these in
6 here, and he should understand this is just what he's going
7 to be dealing with in all of the cases that he faces through
8 the years so --

9 THE COURT: Thank you.

10 MR. FINK: Thank you.

11 THE COURT: And I would formally like to thank Eric
12 too.

13 Mr. Iwrey?

14 Eric is going with the Court of Appeals for a
15 two-year clerkship with Judge Griffen in Traverse City. Poor
16 thing, he's moving to Traverse City.

17 MR. IWREY: Congratulations, and we'll miss you.

18 Your Honor, I think we agree with the plaintiffs on
19 most of the protocol for the numbering and the appearance
20 protocols and the captioning protocols. As Mr. Fink
21 mentioned, we did have some issues with the very last draft
22 that we were sent while I was away that seemed to want to
23 transform this into an overall consolidation order for the
24 other cases, which we would object to for the reasons that I
25 stated earlier because those parties should have a chance to

1 object not only to appointment of lead counsel but whether it
2 is appropriate to consolidate it, whether there are common
3 issues, et cetera, and we couldn't take a position on that as
4 the wire harness people. So my --

5 THE COURT: I'm not sure where you are going with
6 common issues, et cetera. I mean, this was a numbering
7 scheme.

8 MR. IWREY: Right.

9 THE COURT: And they are going to fit into this
10 scheme no matter --

11 MR. IWREY: That's exactly my point.

12 THE COURT: -- what counsel or who is representing
13 them.

14 MR. IWREY: My point is that the draft we received
15 said OSS as well as bearings were consolidated, and we
16 couldn't stipulate to that because there were non-present
17 parties that have a right to address those issues. I wanted
18 to limit this order just to the numbering protocols that we
19 discussed and leave those other issues about the
20 appropriateness of consolidation for another day when those
21 parties are all served and present. So we will get you a
22 draft that hopefully will just be limited to the numbering
23 and appearance issues without prejudice to other issues such
24 as consolidation.

25 And I would add that in terms of --

1 THE COURT: All right. Because I would like to
2 know more about that. I'm getting a little mixed up about
3 coordination, consolidation. These maybe are magic words to
4 you but --

5 MR. IWREY: I agree, Mr. Spector, it would be
6 coordination, I will agree with you on that. Under Rule 42
7 would be the standard for cases that are only in the Eastern
8 District of Michigan.

9 THE COURT: All right.

10 MR. IWREY: So I would appreciate it if the CMO 3
11 would also reflect the right to object to those issues as
12 well by the other parties when the dust settles and they all
13 come to the Eastern District of Michigan or they all come
14 before the Court.

15 THE COURT: I'm not sure that CMO 3 --

16 MR. IWREY: My point is that the objections to the
17 non-present parties should be preserved --

18 THE COURT: All right.

19 MR. IWREY: -- for both lead and liaison counsel as
20 well as other issues such as Rule 42.

21 THE COURT: Okay.

22 MR. IWREY: Okay.

23 THE COURT: Did you have a good trip?

24 MR. IWREY: Yes. Thank you very much, Your Honor.
25 It is very nice to be back.

1 THE COURT: Good. Welcome back.

2 Who is going to speak?

3 MR. FINK: Your Honor, we are not competing here.
4 There is an issue that it will be helpful if we could -- I
5 hate to put it this way, but if we could have about a
6 five-minute break to speak among ourself we have an issue
7 that we think we may be able to resolve but we don't want to
8 get the Court involved in what's unnecessary mess, if you
9 will.

10 THE COURT: Okay. Do you need that right now?

11 MS. SALZMAN: Hollis Salzman, Your Honor.

12 I think there's just some confusion, at least in my
13 mind, what the defendants are objecting to. I don't think
14 the plaintiffs are saying that all of the six auto part cases
15 would be consolidated. We are saying there should be
16 coordination among the cases. What we are looking for from
17 the Court is a consolidation order for each of the subpart
18 cases within each product. So, for example, for heating
19 control panels we need a consolidation order so that all of
20 the end-payor cases that are on file, there's about nine
21 end-payor cases, we want to file a consolidated amended
22 complaint so the defendants can respond and we can move the
23 litigation forward. We need an order from the Court on
24 consolidation in that regard.

25 THE COURT: Okay. Is there any objection to that?

1 MR. SANKBEIL: May I speak, Your Honor?

2 THE COURT: You may.

3 MR. SANKBEIL: William Sankbeil from Kerr, Russell
4 & Weber. I'm only representing Fujikura in wire harness.

5 To follow up on what Mr. Iwrey said, the defendants
6 have no objection to the filing protocol order without added
7 verbiage. What Ms. Salzman just said is she wants a
8 consolidation order, for example, with parties who are not
9 before the Court, and the wire harness defendants did not
10 want to speak to that issue. For example, what you did in
11 wire harness is you had a status conference, you properly
12 went through procedures and orders of which order we will
13 proceed with a CMO, appointment of counsel.

14 As to the cases not in front of Your Honor, at
15 least the defendants, for example bearings and OSS, I don't
16 even know if all of those parties have been served. What we
17 do know is the cases have been filed in the Eastern District
18 of Michigan, they weren't part of the panel order, and I
19 think what Mr. Iwrey has been referring to is just like any
20 other group of cases, if you have related cases filed in this
21 district, as you well know, Your Honor, different judges are
22 assigned, we have local protocol deciding which judge will
23 have those cases. When they get to the judge there is a
24 decision as to coordination or consolidation under Rule 42.

25 All we are saying, the wire harness defendants, is

1 that we should not be expected to make stipulations on the
2 bearings cases will all be consolidated and coordinated
3 because we don't represent those people at this point. There
4 will be counsel. Now, if Your Honor wants to move forward
5 and have numbers in anticipation of where things will be
6 filed, that makes perfect sense, but it also makes perfect
7 sense for you to have in this order that an absent party can
8 object. So we think they are taking the cart before the
9 horse and it is almost an ex-parte hearing relative to
10 bearings and OSS when those defendants haven't appeared.
11 That's all we are saying. We just want a plain vanilla
12 protocol order.

13 THE COURT: All right.

14 MR. SANKBEIL: Thank you.

15 THE COURT: Ms. Salzman?

16 MS. SALZMAN: Hollis Salzman. I think that we have
17 the wire harness case, then we have the three cases that were
18 subject of the last MDL order, that's the heating control
19 panel, the instrument panel cluster and the fuel senders
20 complaints. Those parties have already appeared in those
21 cases and they were subject to the MDL, so certainly there
22 would not be an issue with notice for those cases.

23 If on the last two cases the -- my memory --

24 THE COURT: The bearings and occupant safety?

25 MS. SALZMAN: Thank you.

1 THE COURT: It's all right, I have a list.

2 MS. SALZMAN: Thank you. If the Court feels
3 comfortable having language in those orders to allow parties
4 to later come in and object I think that's acceptable at
5 least for the end-payors.

6 THE COURT: Okay. I know you asked for a break. I
7 don't know if that's still necessary with this discussion.
8 Let's proceed a little bit and just see.

9 I think that the instrument panel and fuel sender
10 and the heater control panel are ready to proceed to the next
11 step. The next step would be I believe the consolidate --
12 the filing of the consolidated amended complaint. And as to
13 the other two -- yes, sir?

14 MR. SANKBEIL: May I suggest that even -- I agree
15 with Ms. Salzman, that's why I make reference to bearing and
16 OSS, I understand what Your Honor did June 15th. May I
17 suggest that we get CMOs in fuel senders and the other parts
18 which will then give dates for CACs, motions to dismiss, just
19 like we did in wire harness?

20 THE COURT: We will.

21 MR. SANKBEIL: Maybe I misunderstood, I apologize
22 if I did, but I thought there was a request to set a date for
23 a CACs now. What I'm suggesting is in those cases with those
24 defense counsel come up with a CMO in each case setting the
25 dates for the various activities. On the other two cases,

1 that was all I was speaking to on bearings and OSS, as to I
2 think they should be removed from that type of thing.

3 MR. KANNER: Your Honor, Steve Kanner, one of the
4 co-leads for direct cases.

5 I think that's exactly what we suggested to do by
6 setting a status date some time in December by which time --

7 THE COURT: December?

8 MR. KANNER: I'm sorry, September, forgive me.
9 Somehow December and vacation is in the mind. But I think
10 that's --

11 THE COURT: Scratch that.

12 MR. KANNER: That's exactly what we would like to
13 do.

14 And with respect to the other cases, the OSS and
15 bearings, it seems to me that the MDL order transferring
16 these matters before, you made it clear that anything in the
17 auto parts related area is going to end up in this district
18 before Your Honor. I am not sure if it makes sense to set
19 impediments in terms of the smooth transitioning of these
20 cases to get in front of this Court and to get them
21 scheduled. I am not sure what -- I get what the defendants
22 are saying but I know that these aren't the same counsel that
23 are going to be appearing for those defendants. I think in
24 any situation if a case is filed in auto parts it is going to
25 end up before Your Honor, and why it is that we don't take

1 all of the steps to organize those makes very little sense.
2 In fact, it seems to me that it adds to the number of
3 hearings like this that we are going to have before Your
4 Honor. One of the things that we promised this Court was to
5 do our best to enhance the efficiencies and not have
6 two-dozen lawyers, not that Detroit is not great at this time
7 of the year, but flying in for things that really ought to be
8 handled administratively.

9 THE COURT: Let me step back and ask you -- don't
10 leave. Let me step back and ask you what do you envision?
11 Now, remember that wire harness was like our template, that
12 case management order for, number one, for what we were going
13 to do. So given that, what is your vision of the next step
14 in these proceedings?

15 MR. KANNER: With respect to OSS and bearings or
16 in --

17 THE COURT: The other five parts. You can separate
18 them, three and two.

19 MR. KANNER: Certainly. I think what we envisioned
20 is ultimately a schedule whereby at the very least status
21 hearings before this Court are one docket call after another.
22 In other words, if we have something up on wire harness that
23 day and, in fact, it would make sense for a general status
24 hearing to contemplate each of the products. There may be
25 nothing new on a particular product but it is essentially a

1 clearinghouse for each of these cases. To me that is the
2 efficiency that I believe we ought to hold up as a light in
3 complex cases like this. And very similar, candidly, to what
4 Mr. Spector was talking about in terms of what happened in
5 the AWP cases, there is a way to run these cases in a
6 streamlined format taking due concern for the rights of all
7 parties, both defendants and plaintiffs' counsel -- and
8 plaintiffs, and the concerns that the various counsel might
9 have. That's what I would envision.

10 THE COURT: Okay. So let me just stop you. So
11 let's say sometime in September we would have a status
12 conference for all parts, they would be sequential but we
13 would have it at the same time basically, so we'll have one
14 status conference, that would be the next step. At that
15 point, as we did with the wire harness, we would determine a
16 date for filing the complaints?

17 MR. KANNER: The CACs, consolidated amended
18 complaints.

19 THE COURT: Yeah, is that what you envisioned?

20 MR. KANNER: Absolutely. I'm hoping by September,
21 for example, we can work out a lot of those -- the timing
22 issues with respect to filing consolidated amended complaints
23 on each of these cases with defense counsel.

24 THE COURT: Okay.

25 MR. KANNER: The more we can do the more we can

1 make these status conferences less arguing about the details
2 on dates and more about substantive issues.

3 THE COURT: All right. My plan was to have a
4 status conference. We had talked about it before as I recall
5 the last time we were here for September anyway.

6 MR. KANNER: Okay.

7 THE COURT: We said September, October. September
8 is fine. So I think we will do that, and we will follow
9 pretty much the outline -- I don't have it here so I can't
10 remember exactly what was in it but in that first case
11 management order that we did, and we will repeat that for all
12 of the other parts.

13 MR. KANNER: We certainly think that makes sense,
14 Your Honor.

15 THE COURT: Ms. Salzman?

16 MS. SALZMAN: Your Honor, what I might suggest is
17 that the parties prepare case management orders modeled after
18 the wire harness case management order that sets out a date
19 for filing consolidated amended complaints and a schedule to
20 either move to dismiss or answer those complaints similar to
21 what we did in wire harness, and that the parties over the
22 next week to ten days attempt to negotiate that language for
23 the cases and if not submit that to Your Honor for
24 consideration. Then in September when we are here for a
25 status conference the case will be moved on to a greater

1 extent and we'll have more to report to the Court about.

2 I don't think it is a good idea to wait until
3 September or October to have a consolidated amended complaint
4 schedule that delays the case, I think, unnecessarily.

5 THE COURT: Okay.

6 MR. SANKBEIL: I agree with Mr. Kanner, and I agree
7 with the Court, that the first order that should be entered
8 in each case -- I would rather use the word each part as
9 opposed to all parts. They are separate cases.

10 THE COURT: All right.

11 MR. SANKBEIL: There's going to be separate
12 counsel. In many of the cases there's no overlap of
13 defendants.

14 As I understand the first order Your Honor is
15 contemplating entering is the order in this case where you
16 gave the protocol of what you wanted to discuss which
17 included various issues. And I agree with Mr. Kanner if you
18 schedule and notice in each case that status conference and
19 what you expect to accomplish, that's the way to proceed.
20 You will have represented parties. We are only here for the
21 wire harness defendants and for Your Honor to enter an order
22 for absent defendants telling them that they are going to
23 discuss this or that when I don't even know if they have been
24 served.

25 THE COURT: Okay. Let me do this. I think I have

1 heard what you have to say. I am going to follow the same
2 procedure as we did in the wire harness case, and the next
3 event will be a status conference for each part. I'm looking
4 at my calendar so while you are all here if you would look at
5 your calendars.

6 MR. SANKBEIL: Can I make a request? I'm a sole
7 arbitrator in a case the last two weeks of September starting
8 the 17th.

9 THE COURT: So it has to be before the 17th?

10 MR. SANKBEIL: Or after.

11 MR. FINK: We just want to note that Mr. Sankbeil
12 has taken out of consideration all of the Jewish holidays
13 which is what we were concerned about.

14 THE COURT: That would be the last part of
15 September. Okay. I'm hearing rumblings. Are you looking at
16 the first of October?

17 MS. SALZMAN: I don't know if this suits everyone's
18 schedules but the opposition to the motion to dismiss in the
19 wire harness case are due on September 11th, so perhaps
20 September 12th or 13th would be a suitable date. I don't
21 know what --

22 MR. SANKBEIL: May I ask one question? I thought
23 there -- wasn't there going to be a filing on the status of
24 service? Where are you all on service because that may have
25 an effect on each of the other cases? It is just a question.

1 MS. SALZMAN: Right. As I said, the MDL -- for the
2 three cases that have already run through the MDL those
3 defendants have been served.

4 MR. SANKBEIL: Okay.

5 MS. SALZMAN: The domestic defendants in the
6 hearings -- at least for the end-payor cases in the hearings
7 and the safety restraint system cases, the domestic
8 defendants have been served and, in fact, the Court has
9 entertained stipulations on due dates for those complaints as
10 it stands to the end-payors. The foreign service for one of
11 those is still outstanding.

12 MR. SANKBEIL: I just inquired because we don't
13 want to run into a service --

14 THE COURT: Yes, you want to get as many people
15 served as you can before that meeting. I think the middle of
16 September meeting would be better until waiting to October,
17 so --

18 MR. KANNER: The 13th or the 14th are clear in
19 terms of having -- they are not good for you?

20 MR. WILLIAMS: No. Of those that are out there if
21 we can do September 12th?

22 THE COURT: How is September 12th?

23 MR. KANNER: That works.

24 THE COURT: Let's do September 12th. We will
25 follow the same schedule, 10:00. I'm going to ask liaison

1 counsel to prepare a notice of the conference in that first
2 case management order as we have talked about so that we will
3 know -- I want you all to have the same input. If you will
4 recall we asked for the agenda from counsel so if you have
5 any items that you want discussed on the agenda please submit
6 it, and that will be put in the order so you know your dates.

7 I wanted to put off the filing in any event of the
8 consolidated complaints until we have the order in on the
9 numbering -- the structure because I want everybody to get
10 into using the new structure, better that we start it now.

11 I will say the wire harness cases which are, of
12 course, already filed and done, they will be put into this
13 new structure by the court staff manually, so they will be in
14 the same CM/ECF structure as everything else.

15 MR. KANNER: Will there be an ECF notice to all
16 counsel when the new structure is actually in place?

17 THE COURT: Yes, yes. We will send out -- we will
18 do the ECF notice and you will all know on the specific date
19 that we start with the new structure, and hopefully it will
20 go without a hitch.

21 Oh, I know what I wanted to tell you. In using
22 this new structure, as I said, the very first digit is a
23 letter here like W for wire harness. Usually it is what, 2
24 for Detroit, 5 for Ann Arbor, it is the location of the court
25 if you are familiar -- I know you are familiar with the

1 numbering system. So that first digit is the location of the
2 court. We are using that to put a letter in to describe the
3 part, and each part will have its own letter.

4 There is one time a month for about ten minutes I'm
5 told when there is a report that has to be done by location
6 and those letters will all be swapped out for a number. So
7 if you happen to hit the docket at that time -- I mean, if
8 you ever run into a problem give yourself about ten minutes
9 and then start it again. I think this is run during the
10 night but my experience now is people file all times of day
11 and night. I just want to warn you, it is just a little
12 glitch so we can use that first digit, but that's the only
13 time that it happens is once a month. Okay.

14 All right. Then let me check my notes here. Can
15 we have a deadline for that docket protocol?

16 MR. FINK: Your Honor, having resolved as much as
17 we have now I don't see how we can take past -- the latest
18 would be Monday. I'm sorry, I can't speak for Howard. You
19 should have seen the face.

20 THE COURT: He's still in vacation mode. He needs
21 a little more time.

22 MR. IWREY: We will get you a draft within the next
23 couple of days that just limits it to the issues on
24 appearance and protocols preserving any rights for objections
25 as we discussed so we will --

1 THE COURT: This is Wednesday, I think you can do
2 it by Monday.

3 MR. FINK: There shouldn't be any controversy, Your
4 Honor.

5 THE COURT: Okay. I'm going to give you all of
6 Monday to complete it, and by Tuesday I would like to see it.

7 MR. FINK: Your Honor, I have one question.

8 THE COURT: Yes.

9 MR. FINK: The Court indicated liaison counsel
10 should prepare a notice of the conference with the date we
11 set. I assume this is to be prepared to provide to the
12 Court?

13 THE COURT: Right, that's fine. I think in our
14 last one we had case management and notice of hearing just
15 so -- not notice of hearing but notice of conferences, yes,
16 we will do that.

17 MS. SALZMAN: We are also going to be resubmitting
18 the order in the next couple of days to you on leadership
19 with the provision for objections.

20 THE COURT: Yes, that order that is known as case
21 management order 3.

22 MS. SALZMAN: Yes. Then also when do you want us
23 to provide you with consolidation orders at least for the
24 three cases that have already run through the MDL and we know
25 that counsel is present?

1 THE COURT: I don't know what you mean by
2 consolidation orders that you are talking to specifically.

3 MS. SALZMAN: Similar to the case management order
4 that was entered in the wire harness case, I believe it might
5 be --

6 THE COURT: I think that's going to be after the
7 status conference.

8 MS. SALZMAN: So we are not going to move for
9 consolidation until after the status conference?

10 THE COURT: Right. I think that would work the
11 best. We have that status conference really in another month
12 so it is not going to be -- okay. Let me see if there is
13 anything else? No. I think that covers it all. Does
14 anybody have anything that they wish to bring to the Court's
15 attention? Okay.

16 Again, when we send out that notice everyone will
17 get notice, whoever wants to come is welcome to come. Of
18 course, you have to decide among yourselves, I do need a
19 representative of both sides and all parties just to make
20 sure we have all bases covered but I think that's it.

21 Anything else? All right. Thank you all very,
22 very much.

23 ATTORNEYS PRESENT: (Collectively) Thank you, Your
24 Honor.

25 THE CASE MANAGER: All rise. Court is in recess.

1 (Proceedings concluded at 10:45 a.m.)

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4 CERTIFICATION

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6 I, Robert L. Smith, Official Court Reporter of
7 the United States District Court, Eastern District of
8 Michigan, do hereby certify that the foregoing pages comprise
9 a full, true and correct transcript taken in the matter of
10 Automotive Parts Antitrust Litigation, Case No. 12-md-02311,
11 on Wednesday, August 1, 2012.

12
13 s/Robert L. Smith
14 Robert L. Smith, CSR 5098
15 Federal Official Court Reporter
16 United States District Court
17 Eastern District of Michigan

18 Date: 08/03/2012

19 Detroit, Michigan
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